



Administrative Conference of the United States

---

**REGULATIONS.GOV AND THE FEDERAL DOCKET  
MANAGEMENT SYSTEM**

---

Draft Report: October 26, 2018

**Todd Rubin**  
**Administrative Conference of the United States**

*This report was prepared for the consideration of the Administrative Conference of the United States. The opinions, views and recommendation expressed are those of the author and do not necessarily reflect those of the members of the Conference or its committees, except where formal recommendations of the Conference are cited.*

## Regulations.gov and the Federal Docket Management System (FDMS)

### Introduction

Federal regulations (hereinafter “rules”) affect nearly all aspects of our lives. The Administrative Procedure Act, the statute that governs a large part of the federal rulemaking process, generally requires agencies to give the public notice of, and the opportunity to comment on, rules they are considering issuing.<sup>1</sup> The main purposes of this mandated opportunity for public input are to facilitate agencies’ access to widely dispersed information and, if necessary, to help regulators rethink critical assumptions about rulemaking proposals, all with the goal of improving the quality of rulemaking.

To submit an informed comment, potential commenters need to be able to at least: 1) access the proposed rule and the agency’s justification for it; 2) access materials upon which the agency substantially relied to develop the proposed rule; and 3) understand the rationale by which the agency made its decision.<sup>2</sup> Commenters should also be able to access other comments that may have been submitted on the proposed rule in time to submit responsive comments, to the extent this is possible. Members of the public, especially those who are subject to the rule, should be able easily to determine whether further action has been taken on the proposed rule and, when a final rule has been issued, to access the rule and all materials, including public comments, that informed its development.

Historically, it has been a challenge for many people to understand the rulemaking process and to access these rulemaking materials. Before the internet was widely available, members of the public interested in reading materials in a rulemaking docket (e.g., supporting materials and other comments submitted) needed to go to the agency and schedule an appointment to inspect the paper files on site. Even being able to find a copy of the *Federal Register* to read the rulemaking proposal required sophistication and resources that many members of the public did not have.<sup>3</sup> Such logistical barriers weeded out many from intelligently participating in the rulemaking process.

Today, because of several statutes and executive branch initiatives, nearly all agency primary rulemaking documents (e.g., notices of proposed rulemaking and final rules) are online.<sup>4</sup>

---

<sup>1</sup> See 5 U.S.C. § 553.

<sup>2</sup> Of course, even these elements are not enough if the agency’s rationale for the proposed rule is not written in language accessible to the relevant audience.

<sup>3</sup> Cary Coglianese, E-Rulemaking: Information Technology and the Regulatory Process, 56 ADMIN. L. REV. 353, 362 (2004) (discussing how access to the Federal Register and Code of Federal Regulations was limited).

<sup>4</sup> See *id.* at 363-66 (detailing administrative efforts starting with the Clinton Administration’s call to federal agencies to increase the “use of IT in developing and implementing regulations”). See generally Cynthia R. Farina, Reporter, *Achieving the Potential: The Future of Federal E-Rulemaking*, Report of the Committee on the Status and Future of Federal e-Rulemaking, 62 ADMIN. L. REV. 279 (2010) (reporting on the development of and potential in eRulemaking).

A member of the public interested in viewing proposed and final rule documents can go to [Federalregister.gov](http://Federalregister.gov). To submit a comment on a proposed rule, view other comments, and read supporting materials, a member of the public can go to [Regulations.gov](http://Regulations.gov), either directly or by a link from [Federalregister.gov](http://Federalregister.gov). Online accessibility therefore has the potential to allow more people to participate in the rulemaking process in an informed, intelligent way. To some extent, it has advanced that goal.<sup>5</sup> However, it has yet to fulfill its potential, for a variety of reasons that will be discussed in this report.

Part I of this report discusses the process that federal agencies use to conduct rulemaking online. Part II discusses how [Regulations.gov](http://Regulations.gov)/the Federal Docket Management System (FDMS) is governed and funded. Part III discusses how it came into being. Part IV discusses the specific legal requirements that it helps agencies fulfill. Part V examines some of its key problems. Finally, Part VI offers some solutions.

## **Part I. What FDMS/[Regulations.gov](http://Regulations.gov) Looks Like and Its Core Functionalities**

Any member of the public can go to [Regulations.gov](http://Regulations.gov) and, once there, search for rulemaking materials, including notices, public comments, and supporting materials. There are several ways that visitors can search for these materials. First, they can enter terms into a search box, just as one would do if searching for materials on a search engine, such as Google. Often, however, this basic search function will yield too many results for visitors to easily sift through to find the desired material. [Regulations.gov](http://Regulations.gov) therefore permits users to perform an “Advanced Search,” which allows them to narrow the results by searching fields such as “Document Type” (e.g., “Notice,” “Proposed Rule,” or “Other”), “Agency,” and “Docket Type” (“Rulemaking” or “Nonrulemaking.”)

To submit a comment, visitors click on a “Comment Now” button that appears next to a notice. Doing so pulls up a text box with a maximum character count of 5,000 and an option to include attachments. People who wish to submit comments that exceed the character count can type “See Attached” (or similar language) in that text box and upload a longer comment. Depending on the agency, there may be fields within the comment page that require visitors to enter certain information about themselves, such as first name, last name, and contact information (e.g., city, state, and country). Some agencies only ask for this information if a commenter indicates that he or she is submitting a comment on behalf of another.

FDMS is where agency officials create the electronic rulemaking dockets (e-dockets), designated elements of which are viewable on [Regulations.gov](http://Regulations.gov). An “e-docket” is simply a virtual folder that contains materials relevant to a particular rulemaking, including the notice, supporting materials, and comments. [Regulations.gov](http://Regulations.gov) is the public-facing website that allows people to access materials in the e-dockets. Agencies create and manage the e-dockets and their contents

---

<sup>5</sup> Congress has also taken a strong interest in advancing this goal. The recently-introduced GOOD Act (or “Guidance Out of Darkness Act”) would require agencies to post guidance documents on [Regulations.gov](http://Regulations.gov) and to provide hyperlinks to the posting on the agency website. *See* S. 2296, 115<sup>th</sup> Cong. (2018).

through FDMS.gov, a password-protected site that can be accessed only by authorized agency personnel.

*All* rulemaking notices that are published in the *Federal Register* automatically appear on Regulations.gov. This includes materials from agencies that do not participate in Regulations.gov, such as the Federal Communications Commission (FCC) and the Securities and Exchange Commission (SEC). This is because there is an automated, “behind the scenes” link between the *Federal Register* and FDMS whereby each day, once the *Federal Register* has been published, rulemaking notices (and several other classes of material) are sent to FDMS and become publicly visible on Regulations.gov.

For the majority of rulemaking agencies that participate in FDMS, once a rulemaking notice arrives in FDMS (and therefore appears on Regulations.gov), an agency user will assign it to a rulemaking docket.<sup>6</sup> With respect to supporting materials, such as Regulatory Flexibility Act analyses, studies, or cases that informed a rule’s development but that do not appear in the *Federal Register*, agency officials must first manually upload these to FDMS and then associate them with a docket. Once they associate them with a docket, they must then designate such items as publicly viewable in order for them to appear on Regulations.gov. Furthermore, assigning documents to a docket allows rulemaking materials to be associated with one another. This association is important for enabling users to find a rulemaking document. It also allows Regulations.gov to include key documents in the history of the rulemaking.

Likewise, comments submitted through Regulations.gov do not automatically appear on Regulations.gov (except if an agency requests this, which very few do). Rather, comments are added to the docket queue on FDMS and an agency official must affirmatively decide whether to associate them with a docket, thereby rendering them publicly viewable on Regulations.gov.<sup>7</sup> This gives agencies the chance to review comments for, among other characteristics, profanity, spam, confidential business information, and personally identifiable information.

## **Part II: How FDMS/Regulations.gov is Governed and Funded**

FDMS/Regulations.gov is governed by an Executive Steering Committee (Committee) that consists of officials from dozens of federal agencies. The Committee is co-chaired by the Deputy Administrator of the Office of Information and Regulatory Affairs (OIRA) and the Chief Information Officer (CIO) of the Environmental Protection Agency (EPA). It makes decisions about the design, operations, maintenance, and budgeting of FDMS/Regulations.gov upon advice in these areas from several smaller, lower-tiered bodies. These bodies include a Change Control Board, an Advisory Board, and a Budget Working Group.

EPA is considered the “managing partner” of FDMS/Regulations.gov. As such, it is responsible for implementing changes to the system that have been approved by the Committee.

---

<sup>6</sup> The independent commissions that have their own eRulemaking systems do not create dockets in FDMS.

<sup>7</sup> Agency officials have the option to upload a large batch of comments.

To facilitate this responsibility, the EPA created a Project Management Office (PMO), which consists of a small staff of experts in online docket management technology.

There is no direct appropriated funding for FDMS/Regulations.gov. Rather, the system is funded through what eRulemaking officials term a “shared services model.” Agencies that participate in eRulemaking fund the system through contributions, decided by a formula. The formula for contributions is based, in part, on: 1) the size of the agencies’ budgets; 2) the average annual number of rules and non-rule items that agencies publish; and 3) the average annual number of comments agencies receive.<sup>8</sup>

### **Part III: How FDMS/Regulations.gov Came Into Being**

In July 2001, President George W. Bush identified “expansion of eGovernment” as one of five priorities of the President’s Management Agenda.<sup>9</sup> To support this priority, the Office of Management and Budget (OMB) put in place an implementation strategy for eRulemaking.<sup>10</sup>

In May 2002, the OMB Director issued a memorandum to the heads of agencies stating that OMB would “consolidate redundant IT systems related to rulemaking.” OMB initially named the U.S. Department of Transportation (DOT), and then the EPA, the lead agency for this initiative. Both agencies had been operating sophisticated online rulemaking systems for years before FDMS/Regulations.gov was put into place.<sup>11</sup>

Regulations.gov was launched in January 2003.<sup>12</sup> At that time, the public was able to view rulemaking materials available for comment and to submit comments. However, the rulemaking dockets themselves (along with, for example, supporting material and public comments) were not available. In September 2003, EPA, as managing partner of the eRulemaking Program, awarded a contract to Lockheed Martin to integrate various online rulemaking systems with the Regulations.gov portal. EPA and OMB considered three general designs for a new government-wide rulemaking docketing system. The first was a single, centralized system that would replace all existing agency online docketing systems. The second would have allowed agencies with existing online rulemaking dockets to keep those dockets, but they would be linked to a main system used by agencies without their own dockets. The final plan was a “tiered system,” which was a hybrid of the two models above.<sup>13</sup>

---

<sup>8</sup> Curtis Copeland, Cong. Research Serv., RL34210, Electronic Rulemaking in the Federal Government 17 (2008).

<sup>9</sup> U.S. Gov’t Accountability Office, GAO-05-777, Progress Made in Developing Centralized E-Rulemaking System 6 (2005).

<sup>10</sup> See generally Farina, *supra* note 4, at 280.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

In February 2004, the Executive Steering Committee, by a vote of 15-2, decided to adopt the first approach.<sup>14</sup> This decision was based on perceived cost savings and ease of searching a centralized system compared to the other two options.<sup>15</sup> In May 2005, agencies began migrating their rulemaking dockets to FDMS. In September 2005, Regulations.gov was updated to allow the public to search and access rulemaking docket contents (e.g., supporting materials and public comments).<sup>16</sup>

By July 2006, seven agencies had migrated to FDMS, and over the ensuing years, more and more agencies did so. Today, all cabinet-level and freestanding Executive Branch agencies (e.g., the EPA) are considered “Participating Agencies” of FDMS/Regulations.gov. This means they maintain their rulemaking and, in some cases, non-rulemaking (e.g., adjudication) dockets on Regulations.gov, and accept comments through the comments feature on the website. To date, there are 184 such “Participating Agencies.” Several independent regulatory agencies, such as the Bureau of Consumer Financial Protection and the Federal Trade Commission, are also “Participating Agencies.” However, most independent regulatory agencies, such as the FCC, do not participate. Although their rulemaking materials do appear on Regulations.gov, due to the link between the *Federal Register* and FDMS, they do not accept comments through the website, and do not have e-dockets. Several of these non-participating agencies maintain their own websites where the public can access a rulemaking docket and comment on a proposed rule.

#### **Part IV: Participation in FDMS/Regulations.gov Facilitates Compliance with the E-Government Act of 2002**

Under the E-Government Act of 2002, agencies must, “[t]o the extent practicable . . . accept submissions under section 553(c) of title 5, United States Code [written data, views, or arguments from interested persons], by electronic means.”<sup>17</sup> Furthermore, agencies must “[t]o the extent practicable, as determined by the agency in consultation with the Director [of OMB] . . . ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under section 553 of title 5, United States Code [“informal rulemaking”].”<sup>18</sup>

These electronic dockets “shall make publicly available online to the extent practicable, as determined by the agency in consultation with the [OMB] Director . . . all submissions under section 553(c) of title 5, United States Code; and other materials that by agency rule or practice

---

<sup>14</sup> COPELAND, *supra* note 8, at 12—13.

<sup>15</sup> *Id.* at 13.

<sup>16</sup> *Id.* at 14.

<sup>17</sup> E-Government Act of 2002, Pub. L. No. 107-347, § 206(c), 116 Stat. 2899, 2916 (included as a note in 44 U.S.C. § 3501 (2018)).

<sup>18</sup> *Id.* § 206(d)(1), 116 Stat. at 2916.

are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically.”<sup>19</sup>

Although the statute does not require that agencies participate in FDMS/Regulations.gov, participation in FDMS/Regulations.gov allows agencies to fulfill their obligations under the statute. First, when an agency participates in FDMS/Regulations.gov, it maintains an e-docket on FDMS, which appears publicly on Regulations.gov. This fulfills its obligation to “ensure that a publicly accessible Federal Government website contains electronic dockets for . . . [informal rulemaking].”<sup>20</sup> When an e-docket in FDMS/Regulations.gov contains and makes publicly accessible all the materials that the agency normally includes in the rulemaking docket for that rulemaking, and contains public submissions, the docket requirement component of the statute is satisfied. Finally, when agencies participate in FDMS/Regulations.gov, it means they accept comments from the public, thus fulfilling their obligations to “accept submissions under section 553(c) of title 5, United States Code, by electronic means.”<sup>21</sup>

## **Part V: The Key Challenges Underlying Regulations.gov**

Before delving into the challenges underlying Regulations.gov, it is useful to first take a step back and keep in mind the extremely tedious work that eRulemaking officials completed to make online rulemaking a reality. The magnitude of this achievement cannot be overstated. Achieving the goal of centralized online rulemaking required tackling an extremely complex information management problem, and eRulemaking officials have managed to make important rulemaking information substantially more accessible to the public than in the era before the existence of FDMS/Regulations.gov.

The limitations of the website, which will be explored below, are not in any way a criticism of the dedication of eRulemaking officials. They are, rather, a byproduct of a system designed to store an amazing variety and quantity of rulemaking materials from nearly 200 agencies (and counting) in one place, and one in which all of these agencies are responsible for their own submissions and docket management.<sup>22</sup> However, with the appropriate resources and prioritization, the challenges can be overcome.

To understand the main challenges with FDMS/Regulations.gov, it is helpful to again consider its purpose. It was created to make it easier for the public to participate in the notice-and-comment process in an informed way and to readily access materials that reveal the status and outcome of the rulemaking process. The eRulemaking Program envisioned that it would do

---

<sup>19</sup> *Id.* § 206(d)(2)(B), 116 Stat. at 2916.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Organizations wishing to engage in comprehensive analyses for public participation in rulemaking are hampered by the fact that although most agencies participate in Regulations.gov, several do not, making it an onerous process to include those agencies’ data. *See, e.g.,* apendleton, *Regulations.gov Continues to Improve, but Still Has Potential for Growth*, The Sunlight Foundation (Apr. 9, 2013, 11:21 AM), <https://sunlightfoundation.com/2013/04/09/regulations-gov-continues-to-improve-but-still-has-potential-for-growth/>.

so by allowing the public to 1) access the text of the Notice of Proposed Rulemaking (NPRM) and, if existent, final rule and accompanying explanation; 2) access materials upon which the agency substantially relied to develop the proposed rule; 3) submit comments online and review the comments others have submitted; and 4) follow the course of a rulemaking to determine whether the NPRM has been supplemented, finalized, withdrawn, etc. However, many users of Regulations.gov have found that the system does not allow people to consistently and reliably: a) search for and find all documents related to a particular rulemaking and b) access supporting materials and other relevant information about rulemakings, for reasons that will be discussed below.<sup>23</sup>

To uncover some of the major flaws with Regulations.gov, I extensively used the site myself to attempt to find rulemaking materials and consulted with academics who have written extensively on the subject. I also had extensive discussions with members of the public who use Regulations.gov regularly.

### Users Find It is Difficult to Consistently and Reliably Search for Rulemaking Materials

One reason it is difficult to reliably and consistently find rulemaking materials is because agencies sometimes create multiple e-dockets for the same rulemaking. For example, if an agency's rulemaking has gone from an NPRM to a final rule, the agency sometimes creates a separate e-docket for the final rule, instead of maintaining a single e-docket to which all documents related to the rulemaking are assigned. A user who tries to find this rule might come across the first e-docket the agency created and conclude incorrectly that there has been no final rule issued.<sup>24</sup> Sometimes, this "multiple e-docket" problem happens because a sub agency (e.g., the Occupational Safety and Health Administration) issued the NPRM and created the initial docket, and the parent agency (e.g., Department of Labor) issued the final rule and created the second docket. In any case, in many instances, there are at least two e-dockets, each containing documents that are part of a single rulemaking.<sup>25</sup> At best, this is confusing. At worst, it misleads the user as to the status of the rulemaking if her search does not locate both dockets and enable her to recognize the relationship between them.

---

<sup>23</sup> Another problem that non-agency users have pointed out is that a user cannot reliably determine how many comments were submitted on a rulemaking and whether the comments visible on Regulations.gov are all the comments the agency received.

<sup>24</sup> Other agency practices sometimes compound the problem of finding all documents related to a rulemaking. In many instances, the title of the final rule does not match the title of the proposed rule, especially if time has passed and there have been, for example, supplemental NPRMs or other shifts in the focus of the rule. Sometimes agencies "reuse" titles, so that it becomes difficult to identify the documents for which the user is looking.

<sup>25</sup> Each e-docket has a unique docket number assigned by FDMS. Docket numbers begin with an alphabetic prefix unique to the agency. So, for example, OSHA's dockets begin "OSHA" and the Department of Labor's dockets begin "DOL." The remaining components of a typical e-docket number are a four-digit date and a three or four-digit number that is the docket number. Each document in the docket is identified by a *document number* that is the docket number plus an additional three (or more) digit number that is the sequential order in which that document was added to the docket. Hence, the document number is the unique identifier of each document and integrally links it with its home docket and, in turn, all the other documents in that docket.

Another reason it is difficult to search for rulemaking materials is because the “Advanced Search” feature on Regulations.gov in many instances does not helpfully narrow down the number of results that come up in a search. The purpose of an “Advanced Search” is to allow users to search by different filters (e.g., date range, type of source, author, and so on), reduce the number of search results, and therefore increase the likelihood of finding what the user is looking for.

For example, suppose someone would like to use Google to find an article she read about robotics, and she recalls that she read the article in 2006. If she were to search Google for this particular article without using an advanced search, she would likely have to sift through millions of results before she came across what she was looking for. However, if she were to use Google’s “Advanced Search” feature, she could select the date range as “1/1/2006-12/31/2006,” thereby drastically decreasing the number of results that come up and increasing the likelihood that she will find the relevant article.

In contrast, many of the filters that appear on Regulations.gov’s “Advanced Search” feature do not helpfully narrow down relevant results. One of the first search filters that a user encounters on the Advanced Search page is “Document Type.” The options presented here are: “Notice”; “Proposed Rule”; “Rule”; “Supporting & Related Materials”; “Other”; and “Public Submission.” One problem presented by these options is that they are not mutually exclusive. A “Proposed Rule” and a “Rule” are both “Notices.” If I am interested in commenting on a particular NPRM, and I go to this Advanced Search page to find that NPRM, it is not clear whether I should select “Notice” or if I should select “Proposed Rule.” Similarly, if I am interested in commenting on a particular advanced notice of proposed rulemaking (ANPRM), it is not clear whether I should select “Notice,” “Proposed Rule,” or “Other.”<sup>26</sup>

The second problem presented by this filter is that it is not comprehensive. Section 553 of Title 5, U.S. Code (Section 553) governs informal rulemaking, but it establishes only minimal procedural requirements, thereby effectively obscuring the complexity of the rulemaking process.<sup>27</sup> Looking only at Section 553, one might think that agencies publish only two documents during the course of a rulemaking: an NPRM and a final rule.<sup>28</sup> In reality, however, agencies publish a remarkable variety of documents during the course of a rulemaking.<sup>29</sup> Each

---

<sup>26</sup> It is worth emphasizing that this confusion is not confined to the public user. At the time that documents are uploaded to FDMS and assigned to dockets, the agency must supply appropriate categorizations. Hence, the person doing data entry must also decide if, for example, an ANPRM or a notice of extension of the comment period should be categorized as a “Proposed Rule,” a “Notice,” or “Other.” Understandably, inconsistent categorization often occurs, within the same agency as well as across agencies.

<sup>27</sup> Memorandum from Emily Bremer 2 (Mar. 14, 2013) (on file with author).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

such document reflects an additional action or step taken by the agency in rulemaking, revealing a more complex and nuanced process than that which is suggested by Section 553.<sup>30</sup>

For example, agencies may engage the public before proposing a rule by issuing an ANPRM or a “notice of inquiry.”<sup>31</sup> They may propose rules by publishing a “notice of intent to grant a rulemaking petition” or seek additional public input through a “supplemental notice of proposed rulemaking” or a “notice of extension of the comment period.”<sup>32</sup> Agencies may choose, or be statutorily required, to hold public hearings on the proposed rule, and notices of these hearings, agendas, etc. often appear on Regulations.gov.<sup>33</sup> The rulemaking may generate a Paperwork Reduction Act submission that the agency notices and takes comments on. Moreover, agencies routinely promulgate a variety of rules in addition to final rules, including “temporary rules,” “interim final rules,” and “direct final rules,” among others. All of these documents—and many more besides—fit within the basic structure of informal rulemaking as set forth in Section 553 of the APA.<sup>34</sup>

Compounding this complexity is the issue of guidance.<sup>35</sup> Section 553 exempts interpretive rules, guidance, policy statements, and other documents from notice-and-comment requirements. Such documents may thus be viewed as technically not part of the rulemaking process encompassed by FDMS/Regulations.gov. On the other hand, agencies often voluntarily elect to craft guidance documents through notice and comment and in some instances are required to seek comment under OMB’s Good Guidance Practices directive. There is great variety in the terminology agencies use to describe these documents. The upshot of this extraordinary complexity is that the list of “Document Type” options, as currently structured, makes it difficult for the visitor to appreciate just what, exactly, is out there.<sup>36</sup>

In addition to the foregoing problems presented by the “Document Type” filter, agencies do not use the “Document Type” categories in a consistent manner. For example, some agencies, when uploading documents to FDMS, tag an ANPRM as a “Proposed Rule.” Others tag it as a “Notice.” And still others tag it “Other.” Some agencies, when uploading a notice of public meeting within a rulemaking, tag the document as a “Proposed Rule,” and some tag it as a “Notice.” Even within a single agency, inconsistency may occur in the use of these categories.

---

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Under the Administrative Procedure Act, a specific kind of guidance document, called an “interpretative rule,” is considered a rule. *See* 5 U.S.C. § 553(b)(3)(A).

<sup>36</sup> The GOOD Act, currently under consideration by the U.S. Senate, would require agencies to publish guidance documents on Regulations.gov and provide a hyperlink to the publication on their own. The bill defines “guidance document” broadly to include such things as blog posts, news releases, etc.

The Sunlight Foundation has noted over forty different metadata fields that can be used to describe agency documents on Regulations.gov.<sup>37</sup>

For these reasons, in order to derive any benefit from using the “Document Type” filter, a visitor, at a minimum, must be aware of the particular methods of “Document Type” tagging from the agency of interest. Even then, the visitor cannot reliably select a single “Document Type” to aid their search, due to the possibility of inconsistent categorization at the point of data entry. The “Document Type” filter is therefore often not helpful in narrowing search results, and may create the misleading impression that the document sought does not exist.

In addition to the “Document Type” filter (for which, recall, the options are “Notice;” “Proposed Rule;” “Rule;” “Supporting & Related Materials;” “Other;” and “Public Submission”), there is a “Document Subtype” filter. This filter can only be used if the user has selected an “Agency” (the “Agency” filter will be discussed below). As is the case with “Document Type,” when an agency uploads a document to FDMS (or associates a document with a docket), the data entry person may identify the document as belonging to a particular “Document Subtype.” However, unlike with “Document Types,” agencies are not required to designate a “Subtype.” If an agency elects to use “Document Subtypes,” however, the agency’s FDMS Agency Administrator configures a standardized dropdown menu of subtypes that are available to that agency’s FDMS users. The subtypes available for inclusion in an agency’s dropdown menu must be selected by the FDMS Agency Administrator from a finite list of shared, standardized subtypes maintained by the eRulemaking PMO. If an agency requires a new subtype, it must first submit the subtype to the eRulemaking PMO for approval. Examples of “Document Subtypes” are: “Advanced Notice of Proposed Rulemaking,” “NEPA Documentation,” “Final Rule,” and “Supplemental Notice of Proposed Rulemaking.”

Although the eRulemaking PMO’s role in the process provides some measure of uniformity, agency discretion to opt out of using “Document Subtype” designations, draft agency-specific “Docket Subtype” menus, and request the creation of new “Document Subtypes” appears to have resulted in significant variation among agency practices and contributed to an overwhelming number of “Document Subtypes” in use on Regulations.gov. Because it offers greater levels of specificity, the “Document Subtype” filter can potentially help solve the non-comprehensiveness problem discussed above with respect to “Document Type.” However, inconsistent practices with respect to its use undermines its effectiveness.

The next filter that a visitor encounters on the “Advanced Search” page is “In these date ranges.” The options here are: “Comment Due Date;” “Comment Start Date;” “Creation Date;” “Posted Date;” and “Received Date.” The first two are fairly straightforward: they simply refer to the date that comments are due, and the dates that the agency first accepted comments on the rulemaking. The last three are not intuitive. While these terms may make perfect sense to the agency at the point a document is uploaded or a comment is released for public visibility, the

---

<sup>37</sup> apendleton, *supra* note 22.

public user is unlikely to understand the difference between “Creation,” “Posted,” and “Received,” and the page does not define these terms.

Immediately below this filter, the user can search by “Agency.” This seems fairly straightforward upon first glance. However, as with many of the other filters, visitors who use this may be misled. The problem here is that selecting a parent agency as the “Agency” does not include results for sub agencies. For example, suppose visitors are interested in reading and submitting a comment on the recently posted “Request for Comments on the Cross-Agency Priority Goal: Leveraging Data as a Strategic Asset.” Perhaps they came across that document on the *Federal Register* website. If they did, they would see that the agency that issued this particular notice is listed as “Department of Commerce.” When the prospective commenters go to Regulations.gov to try to find and comment on the document, they would, quite sensibly, select “Department of Commerce” as the “Agency.” However, if they do so, they will not be able to find the document. This is because the “Agency” that created the docket in FDMS was, in this instance, a sub agency of the Department of Commerce: the Bureau of the Census. Searching by “Department of Commerce” will not pull up the document. Visitors who use this filter and select a parent agency may erroneously conclude that a particular document has not been published.

One of the next filters on the “Advanced Search” page is “Docket Type.” Here, the user may select “Rulemaking” and “Nonrulemaking.” Given that the name of the website is “Regulations.gov,” and “regulation” is often used synonymously with “rulemaking,” the appearance of “Nonrulemaking” as a “Docket Type” may cause confusion. Some agencies include non-binding guidance materials under the “Nonrulemaking” “Docket Type.” Some agencies, such as the U.S. Department of Transportation, include their adjudication dockets under “Nonrulemaking.” Regulations.gov does not define the term “Nonrulemaking,” but this would be very helpful information for a member of the public to know before searching.

There are additional complexities that one will encounter if one decides to use the “Docket Type” filter. For example, a visitor who selects “Nonrulemaking” as the “Docket Type,” and “Proposed Rule” and “Rule” as “Document Types,” will get 23,328 results. On its face, it is difficult to comprehend how it can be the case that there are any instances in which a “Proposed Rule” or a “Rule” can be part of a “Nonrulemaking” docket. It is possible that some agencies’ adjudication dockets contain “Proposed Rules” and “Rules” as “Supporting and Related Materials.” That would be a sensible explanation for a “Proposed Rule” and a “Rule” being part of a “Nonrulemaking docket.” However, it appears that in most instances in which a “Proposed Rule” and a “Rule” are part of a “Nonrulemaking Docket,” the “Proposed Rule” or “Rule” is the primary document. This means that either the agency official incorrectly labeled the docket “Nonrulemaking,” or incorrectly labeled, say, an adjudication order (or other kind of “Nonrulemaking document”) as a “Proposed Rule” or a “Rule.”

An additional problem with the “Docket Type” filter is that if a user selects *either* “Rulemaking” or “Nonrulemaking” as the “Docket Type,” Regulations.gov displays materials that are not associated with *any* docket at all (e.g., documents from agencies that do not participate in FDMS/Regulations.gov). It could be confusing for a member of the public to see a freestanding document (say, an order from the SEC) to come up in a search of “Docket Types.”

In addition to the “Docket Type” filter, there is a “Docket Subtype,” as well as a “Docket Subtype Level 2” filter. The “Docket Subtype” filter can only be used if the visitor has selected an “Agency,” and the “Docket Subtype Level 2” filter can only be used if the visitor has selected an “Agency” *and* a “Docket Subtype.” As is the case with “Document Subtype,” agency officials *can* identify dockets as belonging to a particular “Docket Subtype” and “Docket Subtype Level 2,” but they are *not required* to use these designations. Most agencies use the “Docket Subtype” without using “Docket Subtype Level 2.” As with “Document Subtypes,” if an agency elects to use “Docket Subtype” and “Docket Subtype Level 2,” the agency’s FDMS administrator configures a standardized dropdown menu of subtypes that will be available to that agency’s FDMS users. Examples of “Docket Subtypes” are: “Consultations Rulemaking,” “Statistics,” and “Health Rulemaking.” Examples of “Docket Subtypes Level 2” are: “101- Balloons, Kites, Rockets/Free Balloons,” “Ultralight Vehicles,” and “Airport Security.”

As is the case with “Document Subtypes,” agency discretion to opt out of using “Docket Subtype” and “Docket Subtype Level 2” designations, draft agency-specific subtype menus, and request the creation of new subtypes appears to have resulted in significant variation among agency practices and contributed to an overwhelming number of “Docket Subtypes” and “Docket Subtypes Level 2” in use on Regulations.gov. This results in the same problems discussed above and therefore further hinders the ability of visitors to use “Advanced Search” to find relevant results.

#### E-Dockets are Not Reliably Informative

Many e-dockets on Regulations.gov do not contain all relevant Unified Agenda<sup>38</sup> information (e.g. whether it was published in the fall or spring edition; whether it is a “Major Rule,” and whether there are “federalism implications”). Others do include this information. The piece of information that allows FDMS to link a rulemaking e-docket to the appropriate Unified Agenda entry is the Regulation Identifier Number (RIN). In some instances, the absence of Unified Agenda information may indicate that the rulemaking was not included in the Unified Agenda, but more frequently the problem is that agencies are not required to enter a RIN when a new rulemaking e-docket is created—and do not do so. Executive Order 12,866 requires that all regulatory actions have a RIN.<sup>39</sup> In practice, a RIN is generated when an agency submits information for a new rulemaking action to the Regulatory Information Services Center (RISC) for inclusion in the Unified Agenda. The RIN is eight digits, the first four of which are unique to the agency, and the second four of which are unique to the particular rulemaking action. When an agency official enters a RIN for a docket in FDMS, the Unified Agenda information is automatically included in the docket folder displayed on Regulations.gov. This occurs because there is a behind the scenes link between FDMS and the Unified Agenda.

---

<sup>38</sup> The Unified Agenda is a semi-annual publication of significant regulatory actions that agencies plan to take in the short and long term. The Unified Agenda requires agencies to indicate, among other things, whether a rule has federalism implications, creates unfunded mandates, or affects small entities.

<sup>39</sup> See Exec. Order No. 12,866, 58 Fed. Reg. 51735 (Sept. 30, 1993) (Section 4(b)).

In some instances, a RIN may not be in existence at the time the e-docket is created. However, the far more common problem appears to be simply the failure to enter a RIN in the appropriate field at the time the e-docket is created—or to amend the docket description at the time when a document having a RIN is added. In many instances when a RIN is not displayed on Regulations.gov (and hence no Unified Agenda information is linked), the RIN can be found in the online *Federal Register* version of the document and/or in the text of the document itself. Extremely inconsistent agency practice with respect to providing the RIN exacerbates search problems: users who are sophisticated enough to try to search by RIN (which, for example, they found in the *Federal Register* notice) may not find documents that are in fact part of the relevant rulemaking.<sup>40</sup>

Yet another problem with respect to e-dockets is they do not always contain supporting materials that are visible to the public. If a visitor opens a docket that does not have supporting material, the visitor would see, under “Supporting Documents,” “No documents available.” As discussed above, there are good, practical reasons for agencies to include supporting materials within their dockets. Doing so helps boost the quality of public comments. It might be consistent with the e-Government Act for the agency not to include any supporting materials (the e-Government Act, after all, only requires inclusion of these materials if “practicable” and if the agency, by rule or practice, includes them in their rulemaking dockets). However, leaving the “Supporting Documents” section of the docket folder without materials may diminish the public’s ability to adequately comment.

## **Part VI: Solutions**

Improving Regulations.gov/FDMS calls for a combination of changes to the system and changes to individual agency practices in using the system. Of course, the system’s design and agency practices in using the system affect each other synergistically.

As a first step, the eRulemaking Program should include a disclaimer on Regulations.gov informing the public that rulemaking history may not be complete and that searching by the title or docket number may not produce all relevant results. It should also implement a method for allowing users easily to find definitions of important and potentially confusing terms used in the search process. It should then promptly begin to implement the changes discussed below.

### Problem: Agencies Sometimes Create Separate E-Dockets for the Same Rulemaking

#### *Solution:*

The eRulemaking Program should configure FDMS/Regulations.gov so that it warns an agency user of FDMS and a public user of Regulations.gov when it appears that there are multiple dockets for the same rulemaking. This can likely be accomplished using technology that analyzes the contents of dockets to detect when there are multiple e-dockets for the same rulemaking. When multiple e-dockets are detected, a warning message should be sent to the relevant agencies on FDMS. It would ultimately be up to the agencies to decide how to respond

---

<sup>40</sup> Additional problems exist with RINs, including the use of a single RIN for multiple rulemakings and the assignment of multiple RINs to a single rulemaking.

to the message, though agencies should take them seriously and strongly consider merging all dockets that pertain to a single rulemaking. A warning message should also appear on Regulations.gov, informing the public that another e-docket may contain relevant information. The other e-docket should be identified by docket number, name, and any other relevant identifying information so the public can easily access that e-docket and determine whether there is, in fact, any relevant information.

Problem: The “Advanced Search” Feature Creates Complexities for Users of Regulations.gov

*Solution:*

The eRulemaking Program should consider enlisting government and private sector experts in rulemaking, information technology, data management, and organization to work closely with one another at all stages of whatever process is ultimately adopted to help improve the “Advanced Search” feature. The process suggested below could be among those that this group of experts uses. It is a large, complex, and resource-intensive undertaking that no single agency or office (e.g., the PMO) alone should be expected to undertake.

First, the “Notice” option under “Document Type” should be marked for elimination so that the remaining options are mutually exclusive. “Other” should also be marked for elimination. Then, all of the “Document Subtypes,” “Docket Subtypes,” and “Docket Subtypes Level 2” should be laid out and organized by agency. Any option that includes another (e.g., “Notice” includes “Advanced Notice of Proposed Rulemaking”) should be marked for elimination so that all of the subtype options within an agency are mutually exclusive. Additionally, “catch all” categories such as “Other” and “Miscellaneous” should be marked for elimination.

Next, a random, sufficiently large sample of all documents on Regulations.gov should be generated. Each one of these documents should be carefully analyzed to determine, among other factors, the nature of the underlying agency process that led to the document, the role the document played in the process, the public response sought by the agency (if any), and the practical consequences that might flow from the document’s publication.

Based on the analysis of these documents, the “Document” and “Docket” “Type” and “Subtype” options should be revised. The revised options should sufficiently capture the diversity of documents available on Regulations.gov, should be mutually exclusive, and should be specific (i.e., there should be no open-ended options such as “Miscellaneous”). Additionally, the set of options should be manageable in number and understandable to the general public (with accompanying guidance material). Each of the revised options should include several specific examples. Additionally, depending on the results, there should be openness to the possibility of marking for elimination the “Subtype” filters entirely.

In selecting and analyzing the different kinds of materials on Regulations.gov, the eRulemaking Program can draw upon the research of Professor Emily Bremer. Professor Bremer, when she was an attorney at the Conference, undertook a comprehensive examination of this sort, and created categories, which could serve as a prototype for a revised set of “Document

Types” and “Document Subtypes.” The Appendix displays an excerpt of Professor Bremer’s work.

After a revised classification scheme for document and docket types and subtypes is settled upon, the public should be given the opportunity to comment on the proposed new scheme, and changes should be considered based on these comments. The Executive Steering Committee should then vote on the scheme. If it is adopted, the eRulemaking Program should publish it on Regulations.gov and widely disseminate it to agency officials. FDMS should then be reconfigured to present this approved list of tags as the choices from which agencies may select when they create dockets or upload documents. The eRulemaking Program should offer training on how documents and dockets are to be classified under the new scheme.

There are at least two approaches the eRulemaking Program can take with respect to the mechanics of how documents are to be classified under the new scheme. Under one approach, agency officials would be responsible for selecting types or subtypes within FDMS, just as they do now. There would be some questions posed to the person entering the data to help ensure that she applies the correct categorization (e.g., “What is the purpose of this document? Is it to solicit input on a rulemaking proposal? If so, consider using one of these labels: [x], [y], [x].”) Alternatively, the eRulemaking Program could, subject to available technology, incorporate the revised scheme into FDMS’s decision logic. Under this approach, agency officials would no longer be responsible for selecting types or subtypes within FDMS. Rather, after they upload documents to FDMS, or associate a document with a docket (as in the case of a rulemaking document that has been sent to FDMS via the *Federal Register*), FDMS would “read” the document and automatically tag it with the appropriate type or subtype based on the software’s analysis of the document’s text. It would seem that an automated approach of this sort would be the *only* way to systematically reclassify documents that have already been tagged, since there are millions of documents on Regulations.gov and the task of reclassifying all of them would be nearly impossible for humans to accomplish.

Under either approach, FDMS users should have the ability to override an initial classification if they believe it is an error. Furthermore, agency officials and members of the public should be given the opportunity to easily flag for review any documents and dockets they believe the system tagged in a way that is inconsistent with the revised classification scheme.

As this new classification scheme is being rolled out, there should be a way to preserve historical data. Suppose an automated approach is employed to reclassify the millions of existing documents on Regulations.gov. What happens to the original classifications? There might very well be some reason why a member of the public might want to know, say, how many documents were tagged as “Notices” in 2012. If, under the new classification scheme, “Notices” is no longer a category, and there was no preservation of the original classification data, that person would not be able to answer the question. eRulemaking officials should therefore contemplate ways to preserve the original classifications as the new classification scheme is deployed.

eRulemaking officials should also consider how to remedy the errors with respect to the “Docket Type” filter. They should ensure that NPRMs, final rules, and other kinds of rulemaking documents do not appear in a search of “Nonrulemaking” dockets if they are the “Primary Documents” within those dockets. They should also consider ensuring that freestanding documents, such as those from non-participating agencies, do not appear in any search of “Dockets,” whether “Rulemaking” or “Nonrulemaking.”

The final issue identified above with respect to “Advanced Searching” is the “Search by Agency” filter. Recall that a visitor who searches by parent agency may miss all documents posted by a sub agency. To remedy this problem, Regulations.gov should display a message whenever a visitor searches by an agency for which there are participating sub agencies. The message should ask the searcher whether she has found what she was looking for and, if not, whether she wishes to run the search again “in related agencies” or some similar language.

#### Problem: Unified Agenda Information Does Not Appear Within All E-Dockets

##### *Solution:*

The eRulemaking Program should ensure that if a RIN appears in the heading of a *Federal Register* page associated with a document, or is identified within the text of a document itself, it is also included within the Regulations.gov e-docket. Recall that including the RIN in the e-docket automatically causes Unified Agenda information to be displayed within the docket. If no RIN is included in the e-docket, no Unified Agenda information is displayed.

To ensure that if a RIN exists, it appears within the relevant Regulations.gov e-docket, the eRulemaking Program should collaborate with GSA’s Regulatory Information Services Center to establish common standards for sharing RIN information over the internet. The eRulemaking Program should also consider establishing RIN as a mandatory field in FDMS, unless a docket manager confirms that the docket does not have a corresponding RIN. Docket managers should be presented with a list of available RINs from ROCIS/RegInfo, and make a positive confirmation of which one to use. There should also be an automatic cross-check to identify which RINs have not been assigned to a docket. Through a combination of notifications and workflow actions, the eRulemaking Program should take proactive steps to find these “orphan” RINs a docket “home.” For all documents for which no RIN has been generated, FDMS should automatically cause a message to be displayed within the docket folder that states: “Unified Agenda Information Not Available Because No RIN Has Been Generated.”

Under this approach, agency officials would still be responsible for including the RIN as they create a docket. The technology would merely serve as a check on agency officials’ work so as to reduce human error. As with “Document Type” and “Docket Type” classifications, agency officials and members of the public should be given the opportunity to easily flag any RINs they believe are incorrect, or incorrectly omitted.

#### Problem: Agencies Do Not Always Include Supporting and Related Materials Within Docket Folders

*Solution:*

The eRulemaking Program should ensure that agencies receive prompts that alert them to any dockets that do not have supporting and related materials. The prompt should state something to the effect of: “This docket must by law include, to the extent practicable, all materials that by agency rule or practice are included in the rulemaking docket, whether or not submitted electronically.” Agency officials would be responsible for deciding how to respond to the message, if at all.

## Appendix

Note: The following is an excerpt from a memorandum written by Emily Bremer while she was an attorney at the Conference.

---

As previously explained, I have organized the rulemaking documents identified through my review of document subtypes. It bears noting that for purposes of this discussion, I define “rulemaking documents” as documents used by agencies to conduct the informal rulemaking process. In keeping with this process-based focus, the documents are organized first into four broad categories, based on the stage of the rulemaking process during which the documents are used. These categories include pre-rulemaking, rulemaking, rules, and post-rulemaking. Within these broad, stage-based categories, documents are further categorized based on their specific purpose or role in that stage of the process. For each individual document, the name of the document is provided, along with the identity of the agency or agencies that published the particular example document(s) I relied upon, and (in parentheses) the section of the *Federal Register* in which the example document is published, if at all. This part concludes with a few other observations and analysis of issues identified during my review.

It bears noting that this is probably not an exhaustive list of rulemaking documents. Although I identified most of these documents through my thorough examination of the documents pulled through searches of Regulations.gov and the *Federal Register* using information provided in the subtype data set, and some of document names listed here are also used as names for subtypes that have been approved for use on FDMS, this is not a list of document *subtypes* per se. I anticipate adding to the list as I complete the remaining research and identify additional documents used by agencies as vehicles of the informal rulemaking process.

### **A. Pre-Rulemaking Documents**

#### **1. Requests for Information that May Support or Inform a Proposed Rule**

- *Advance Notice of Proposed Rulemaking*—Treasury (proposed rules)
- *Notice of Inquiry*—FCC (not published in the *Federal Register*)
- *Request for Information*—Labor ESA (proposed rules; combined with extension of comment period)

#### **2. Requests for Further Pre-Rule Public Input**

- *Notice of Hearing*—Labor OSHA (notices; seeking input on regulatory agenda and priorities)
- *Notice of Extension of Comment Period*—Treasury (proposed rules), CPSC (proposed rules)

### 3. Negotiated Rulemaking Documents

- *Notice of Intent to Form a Negotiated Rulemaking Committee*—Interior (proposed rules; consolidated with Request for Nominations)
- *Notice of Establishment*—HHS (notices)
- *Request for Nominations*—Interior (proposed rules; consolidated with Notice of Intent to Form a Negotiated Rulemaking Committee)

## B. Rulemaking Documents

### 1. Proposed Rules for Public Comment

- *Notice of Proposed Rulemaking*—5 U.S.C. § 553(b)
- *Supplemental Notice of Proposed Rulemaking*—EPA (proposed rules; combined with an extension of the comment period)
- Prepublication Posting of Proposed Rules and Other Documents
  - *Prepublication Display*—CMS (refers to prepublication posting on Regulations.gov or the agency’s website of a NPRM (or other document) that has been submitted to the *Federal Register* for publication)
  - *Signed Federal Register Document*—EPA (used for the same purpose as “prepublication display”)
- *Subject Matter Based Subtypes Used for NPRMs and SNPRMs*—For FWS and EPA in particular, the eRulemaking PMO has approved subtype designations based on the subject matter of a proposed rule, which the agency routinely includes in the title of its *Federal Register* documents.<sup>41</sup> In some cases, these subtypes that have been approved for use are based on subjects that are subsidiary to a larger subject. In such cases, both the primary and subsidiary subjects are typically included in the title of document(s) published in the *Federal Register*.
  - *Migratory Bird Hunting*—Interior FWS (proposed rules; examples are actually SNPRMs)
  - *Approval and Promulgation of State Implementation Plans*—EPA (proposed rules)
  - *Public Hearings and Submission of Plans*—EPA (proposed rules)
  - *Endangered and Threatened Wildlife and Plants*
    - *Proposed Critical Habitat Designation*—Interior FWS (proposed rules)
    - *Proposed Species Listing*—Interior FWS (proposed rules)
    - *Proposed Species Reclassification*—Interior FWS (proposed rules)

---

<sup>41</sup> The subtype data set included rulemaking subtypes that have been approved for use on FDMS. In some cases, agencies have requested and secured approval for a subtype, but have not configured the subtype for use, and are therefore not actively using the subtype to categorize documents on FDMS.

- *Proposed Establishment of Nonessential Experimental Population*—Interior FWS (proposed rules)
  - *Migratory Bird Subsistence Harvest in Alaska*—Interior FWS (proposed rules)
  - *Injurious Wildlife Species*—Interior FWS (proposed rules)
  - *Taking and Importing Marine Mammals*—Commerce NOAA (proposed rules)
  - *Refuge-Specific Regulations*—Interior FWS (proposed rules)
  - *Eagle Permits*—Interior FWS (proposed rules)
  - *Migratory Bird Permits*—Interior FWS (proposed rules)
- Petitions for Rulemaking
  - *Notice of Receipt of Petition for Rulemaking*—NRC (proposed rules)
  - *Notice of Availability and Request for Comments*—DHS Coast Guard (proposed rules)

## **2. Requests for Further Public Input on Proposed Rules**

- *Notice of Extension of Comment Period*—Interior (proposed rules); Defense (rules and regulations)
- *Reopening of Comment Period*—EPA (proposed rules)
- *Request for Comments*—FCC (proposed rules; requesting comments on a new development relevant to an ongoing rulemaking)
- *Notice of Data Availability*—EPA (proposed rules; giving notice that new data relevant to an ongoing a rulemaking is available and providing an opportunity for the public to comment on it)
- *Notice of Public Meetings*—DOT FTA (notices)
  - *Notice of Stakeholder Meeting*—EPA (notes from meeting posted on regs.gov suggest meetings are sometimes used to engage the public on proposed rules).
  - *Notice of Meeting*—NRC (proposed rules)
- *Notice of Public Hearing*—Copyright Office (proposed rules); OSHA (proposed rules, though identified on Regulations.gov as notices); FMCSA (proposed rules; called a “Notice of Change in Hearing Structure,” updating previously announced plan for public hearing on proposed rule)

## **3. Proposed Changes to Promulgated Rules**

- *Notice of Proposed Extension of Effective Date*—OPM (proposed rules; combined with proposal to revoke previously published final rule)

## **4. Non-Promulgation Termination of a Rulemaking Proceeding**

- Notice of Termination
  - *Notice of Termination*—DHS Coast Guard (proposed rules)

- *Notice of Termination of Proceeding*—DOT (proposed rules)
- *Notice of Termination of Rulemaking*—DOT NHTSA (proposed rules)
- *Notice of Termination of Proposed Rule*
- **Withdrawal**
  - *Withdrawal*—EPA (proposed rules)
  - *Withdrawal of Proposed Rule*—VA (proposed rules); HUD (proposed rules)
  - *Withdrawal of Proposed Rule and Closure of Petition for Rulemaking*—NRC (proposed rules)
- **Denial of Petition**
  - *Denial of Petition for Rulemaking*—NRC (proposed rules)
- **Resolution**
  - *Resolution and Closure of Petition Docket*—NRC (proposed rules)

## **C. Rules**

### **1. Temporary Rules**

- *Temporary Rule*—Commerce NOAA (rules and regulations; also identified as an emergency action)
- *Temporary Interim Rule*—DHS Coast Guard (rules and regulations)

### **2. Interim Rules**

- *Notice of Tentative Final Order*—FDA (older documents; not clear how published in *Federal Register*)
- *Tentative Final Regulation*—FDA (rules and regulations)
- **Interim Final Rules**
  - *Supplemental Interim Final Rule*—Commerce ITC (rules and regulations)
  - *Interim Final Rule with Request for Comments*—HHS (rules and regulations)
- *Emergency Airworthiness Directive*—FAA (rules and regulations)

### **3. Direct Final Rules**

- *Direct Final Rule*—EPA (rules and regulations)
- *Giving Effect to Consent Decree*—EPA (rules and regulations)
- *Airworthiness Directives*—FAA (rules and regulations)
- *State Implementation Plans*—EPA (rules and regulations)

#### **4. Final Rules**

- *Prepublication Display*—EPA (rules and regulations; refers to the pre-publication posting on Regulations.gov of a final rule or other document after it has been submitted to the *Federal Register* for publication)
- *Final Rule*—Commerce NOAA (rules and regulations)
- *Final Rule with Request for Comments*—FAA (rules and regulations; airworthiness directive)
- *Affirmation of Interim Rule*—Agriculture APHIS (rules and regulations)
- *Subject Matter Based Subtypes Used for Final Rules*—As with proposed rules, FWS and EPA have secured approval to use subtype designations based on the subject matter of a final rule.
  - *Endangered and Threatened Wildlife and Plants*
    - *Species Listing*—Interior FWS (rules and regulations)
    - *Establishment of Nonessential Experimental Population*—Interior FWS (rules and regulations)
    - *Species Reclassification*—Interior FWS (rules and regulations)
    - *Species Delisting*—Interior FWS (rules and regulations)
    - *Critical Habitat Designation*—Interior FWS (rules and regulations)
  - *Injurious Wildlife Species*—Interior FWS (rules and regulations)
  - *Incidental Take of Marine Mammals*—Commerce NOAA (rules and regulations)
  - *Refuge-Specific Hunting and Sport Fishing Regulations*—Interior FWS (rules and regulations)
  - *Migratory Bird Subsistence Harvest in Alaska*—Interior FWS (rules and regulations)
  - *Migratory Bird Hunting*—Interior FWS (rules and regulations)

#### **5. Actions Related to Effective Dates of Previously Published Rules**

- *Delay of Effective Date*—DoD/GSA/NASA (rules and regulations); FDA (rules and regulations)
- *Confirmation of Effective Date*—FAA (rules and regulations)
- *Notice of Confirmation of Effective Date*
  - *Confirmation of Effective Date of Direct Final Rule*—DOT PHMSA (rules and regulations)
  - *Direct Final Rule; Confirmation of Effective Date*—FDA (rules and regulations)
- *Notice of Stay of Action*—FDA (rules and regulations); EPA (rules and regulations)
- *Extension of Compliance Date*—FDA (notices), TSA (rules and regulations)

#### **D. Post-Rulemaking Documents**

## 1. Special Permissions or Limited Modifications of Regulatory Requirements

- *Temporary Permit*—FDA (notice; also pre-rulemaking, as it is used to evaluate potential need for changes to existing regulations; granted to class via individual)
- *Notice of Variance*—Energy (notices)
- *Petition for Modification*—MSHA (notices)
- *Equivalency Determination*—Coast Guard (notices)

## 2. Solicitation of Public Input at the Enforcement Stage

- *Request for Data, Information, and Views*—FDA (notices)
- *Stakeholder Meeting*—OSHA (notices)
- *Town Hall Meeting*—CMS (notices)

## 3. Notice of Challenge to Rule

- *Notice of Appeal*

## 4. Guidance

- *Request for Information*—FDA (notices; combined with a Notice of Availability of draft guidance)
- *Proposed Guidance with Request for Comment*—Treasury OTS (notices)
- *Proposed Statement of Policy*—FEC (proposed rules)
- *Proposed Guidelines*—NHTSA (notices)
- *Notice of Proposed Interpretation*—DHS (notices)
- *Proposed Interpretative Statement*—CFTC (proposed rules)
- *Notice of Availability*—DOT FTA (notices)
- *Proposed Generic Communication*—NRC (notice; *Federal Register* action identified as “Notice of Opportunity for Public Comment”)
- 

Agencies similarly use a variety of documents to issue final guidance:

- *Final Statement of Policy*—FDIC (notices)
- *Final Policy Statement*—NRC (rules and regulations)
- *Notice Policy Statement*—FAA (notices)
- *GDL Guidance*—FDA (not published in *Federal Register*)
- *Technical Support Document*—EPA
- *Final Supervisory Guidance*—Treasury FDIC (notices)
- *Industry Guidance*—FCC (notices; identified as “policy statement”)
- *Notice of Final Interpretations*—Education (notices)

Todd Rubin  
Draft | October 26, 2018

- *Notice of Significant Guidance*—USDA (notices)
- *Notice of Republication of Policy Guidance With Request for Comment*—DHS (notices)
- *Policy Guidance*—State (notices)
- *Notice of Policy Guidance*—DOT (rules and regulations)

*Management Directives*—DHS (not published in *Federal Register*); NRC